Filed 8/19/19 Paland v. Brooktrails Township Services District Board of Directors CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DAVID PALAND, Plaintiff and Appellant, v. BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS, Defendant and Respondent.	A156229 (Mendocino County Super. Ct. No. SCUKCVG0799168)

David Paland appeals from an order denying his motion to tax costs the Brooktrails Township Community Services District Board of Directors (Board) incurred, more than nine years ago, in connection with a prior appeal. We affirm.

BACKGROUND

A.

Paland I

Brooktrails Township Community Services District (District) provides water and sewer service to real property parcels in or near Willits, California. Paland is a property owner in the District. (*Paland v. Brooktrails Township Community Services Dist. Bd of Directors* (2009) 179 Cal.App.4th 1358, 1362 (*Paland I).*) In 2007, Paland sued the Board, alleging the District's monthly base rates, when charged to customers whose water service had been turned off, were "standby charges" subject to the owner voting requirements of California Constitution article XIII D, section 4, and the District had failed to comply with those requirements. (*Paland I, supra,* 179 Cal.App.4th at pp.

1362–1364.) The trial court entered judgment in the Board's favor and Paland appealed. (*Id.* at pp. 1362, 1364-1365.)

In *Paland I*, this Division agreed with the trial court that Proposition 218 (Cal. Const., arts. XIII C, XIII D) did not entitle Paland to relief because the monthly base rates were fees for immediately available property-related water and sewer services, rather than standby charges or assessments, and exempted from the voter approval requirement by California Constitution, article XIII D. (*Paland I*, *supra*, 179 Cal.App.4th at pp. 1361-1362, 1364-1365, 1371.) In its disposition, *Paland I* ordered Paland to pay the Board's costs on appeal. (*Id.* at p. 1372.) The California Supreme Court denied Paland's petition for review and remittitur issued on February 11, 2010.[1]

B.

On February 1, 2010, the Board filed a memorandum of costs in the superior court, which sought $1,029.02 in costs incurred on appeal. Three days earlier, the Board served the memorandum, by mail, on Paland. More than eight years later, the Board obtained an abstract of judgment in that same amount, "plus interest . . . from [February 12,] 2010." At the same time, the District filed a memorandum of costs after judgment and declaration of accrued interest, which sought an additional $121 in enforcement costs.

In November 2018, Paland filed a motion to tax costs. He took no issue with the Board's 2018 enforcement costs and instead argued the Board's 2010 memorandum of costs was premature because it was filed before the *Paland I* remittitur issued. The Board opposed Paland's motion, contending Paland waived any irregularity by failing to file a timely motion to tax costs. The trial court denied Paland's motion.

DISCUSSION

Paland contends the trial court lacked jurisdiction to award costs because the Board's 2010 costs memorandum was filed prematurely – before our remittitur in *Paland*

[1] Paland filed a request for judicial notice of our Supreme Court's order denying review. We deny Paland's request for judicial notice as unnecessary.

I issued – rather than within the 40-day time period set out in California Rules of Court, rule 8.278(c)(1).[2] We disagree.

A.

An order denying a motion to tax costs on appeal is appealable as an order after judgment. (Code Civ. Proc., § 904.1, subd. (a)(2); *Krikorian Premiere Theatres, LLC v. Westminster Central, LLC* (2011) 193 Cal.App.4th 1075, 1085 & fn. 4; but see *Barnes v. Litton Systems, Inc*. (1994) 28 Cal.App.4th 681, 682, 685.) When the determination of whether costs should be awarded is an issue of law on undisputed facts, our review is de novo. (*City of Long Beach v. Stevedoring Servs. of America* (2007) 157 Cal.App.4th 672, 678.)

Rules 8.278 and 3.1700 govern the procedure for claiming costs on appeal. (See Code Civ. Proc., § 1034, subd. (b); *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 260 ["Rule 8.278 is the rule directly governing costs on appeal, and it directs the reader to the procedure set out in rule 3.1700 for obtaining or resisting costs on appeal"].) In 2010, former rule 8.278(c)(1) provided: "Within 40 days *after* the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs *under rule 3.1700*." (Former rule 8.278(c)(1), italics added.)

To object to the Board's memorandum of costs, Paland was required to serve and file a motion to strike or tax costs "in the manner required by rule 3.1700." (Rule 8.278(c)(2).) Rule 3.1700(b)(1) requires the objecting party to file a motion to strike or tax costs within 15 days after service of the cost memorandum. "The party claiming costs and the party contesting costs may agree to extend the time for serving and filing the cost memorandum and a motion to strike or tax costs. . . . In the absence of an agreement, the court may extend the times for serving and filing the cost memorandum or the notice of motion to strike or tax costs for a period not to exceed 30 days." (Rule 3.1700(b)(3).)

---

[2] All further references to a rule of court are to the California Rules of Court.

"After the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs on the judgment." (Rule 3.1700(b)(4).) Thereafter, the award of costs is immediately enforceable as a money judgment. (*Krikorian Premiere Theatres, LLC v. Westminster Central, LLC, supra,* 193 Cal.App.4th at pp. 1083-1084; rule 8.278(c)(3).)

B.

Although we have no transcript from the hearing on Paland's motion, and therefore cannot confirm the trial court's basis for denying the motion, we presume the court concluded Paland did not file a timely motion to strike or tax costs within the time allowed by rules 8.278(c) and 3.1700(b)(1). We agree with the Board that Paland thereby waived any objection to its 2010 costs memorandum. (See *Santos v. Civil Service Bd.* (1987) 193 Cal.App.3d 1442, 1447 [failure to file timely motion to tax costs constitutes "waiver of the right to object"].)

Paland does not persuade us to alter our conclusion by relying on an older line of authority holding that *late* filing of a memorandum of costs deprives the trial court of jurisdiction to award such costs. (See *Johnson v. Schimpf* (1928) 91 Cal.App. 26, 36-37 ["As the statutory time for filing the cost bill had expired when it was filed, . . . there was no jurisdiction in the trial court, or its clerk to either allow or enter up these items"].) Paland is correct that the same rule was once applied when a cost memorandum was filed too early. (See *Abney v. Belmont Country Club Properties, Inc*. (1929) 100 Cal.App.12, 17.)

However, the modern view is that premature filing of a costs memorandum is " 'a mere irregularity,' " which is waived unless the party opposing costs files a motion to strike the cost bill. (*Haley v. Casa Del Rey Homeowners Assn*. (2007) 153 Cal.App.4th 863, 880; *Pamela W. v. Millsom* (1994) 25 Cal.App.4th 950, 961; *San Francisco Unified School District v. Board of National Missions* (1954) 129 Cal.App.2d 236, 242-243.) Thus, in the absence of a timely motion to strike costs, "courts treat prematurely filed cost bills as being timely filed." (*Haley, supra,* at p. 880; accord, *Brown v. West Covina Toyota* (1994) 26 Cal.App.4th 555, 560, disapproved on another ground in *Murillo v.*

Fleetwood Enterprises, Inc. (1998) 17 Cal.4th 985, 996.) Paland has presented no persuasive reason to limit this understanding to prejudgment costs. The language at issue is not materially different (compare *Brown, supra,* at p. 560 with former rule 8.278(c)(1)), and the procedure for obtaining and opposing both types of costs is established by rule 3.1700. (Rule 8.278(c)(1)-(2).)

Paland has shown no prejudice from the District's premature filing. He claims he did not respond to the premature memorandum of costs because he "did not believe a memorandum of costs filed outside the 40-day limitations period . . . required a response." Given the authority already discussed, his belief was unreasonable and his failure to act resulted in the 2010 costs becoming a judgment. (Rule 3.1700(b)(4); *Alan S. v. Superior Court, supra,* 172 Cal.App.4th at p. 262.) Nor is he correct that we can excuse his failure to file a motion because the trial court would have lacked jurisdiction had he attempted to do so between February 12, 2010 and March 3, 2010. (See Code Civ. Proc., § 1013, subd. (a); *Brown v. West Covina Toyota, supra,* 26 Cal.App.4th at p. 560 [treating both premature memorandum of costs and premature motion to strike as having been filed on the earliest date allowed by rule].)

Paland's failure to file a timely motion to strike or tax the 2010 costs memorandum resulted in the costs becoming a judgment. (Rule 3.1700(b)(4); *Alan S. v. Superior Court, supra,* 172 Cal.App.4th at p. 262.) The trial court did not err in denying Paland's motion to tax.

DISPOSITION

The post judgment order denying Paland's motion to tax costs is affirmed. The Board is entitled to its costs on appeal.

_____
BURNS, J.

WE CONCUR:

_____
SIMONS, Acting P. J.

_____
NEEDHAM, J.